

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
NEBRASKA PORK PARTNERS, a Nebraska General Partnership	NO. 2007-AFO- 28
Harrison County, Iowa	

TO: Nebraska Pork Partners, A Nebraska General Partnership
Woodbine Facility
Attn: Michael Blaser, Attorney
Regency West 5
4500 Westown Parkway, Ste 277
West Des Moines, Iowa 50266-6717

SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Nebraska Pork Partners (NPP) for the purpose of resolving the issues surrounding a manure discharge at NPP's facility in Woodbine, Iowa and the resulting fish kill in Elk Creek and Willow Creek. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Thad Nanfite Field Office #4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

I. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance

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with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459, and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. NPP owns and operates the Woodbine Finishers facility, a swine confinement feeding operation located at 2608 140th Street in Woodbine, Iowa (Section 25, T81N, R43W, Harrison County, Iowa). The facility was originally built as a 1,200 head sow farrowing and 9,600 head finishing facility with two, 2-stage lagoon systems. In 1996, the facility replaced its lagoon system and began operation as a 20,080 head swine-finishing operation with one, synthetically lined anaerobic storage lagoon. The two 2-stage lagoon systems have been abandon and closed and the anaerobic storage lagoon is inspected annually by DNR.

2. On March 20, 2007 at approximately 5:20 pm, DNR's emergency response answering service received a report from Gale Schafer, an NPP employee, of a manure release from NPP's anaerobic lagoon into a nearby creek. Thad Nanfity from DNR Field Office 4 was paged and immediately contacted Mr. Schafer who stated that the release occurred between 7am and 9am on March 20, 2007, and the amount of manure released was unknown. Mr. Schafer stated a pipe coming from a pump station had broken, causing the manure to flow into Elk Creek. Due to the impending darkness which would make assessing the spill difficult and the amount of time that had elapsed since the spill, the investigation was continued until the following day.

3. On March 21, 2007, DNR Field Office 4 personnel conducted a field investigation of the manure spill. After talking to Mr. Schafer regarding steps that could be taken to avoid similar discharges in the future, DNR Field Office 4 personnel checked points downstream of the discharge point. DNR Fisheries staff was also called to assess the fish kill. A fish kill was observed throughout Elk Creek from the point of entry downstream of the facility to the confluence with Willow Creek.

a. Above the bridge at the intersection of Elk Creek and Easton Road (County F20L) dead minnows were observed. DNR Field Office 4 personnel took photographs and the field test indicated ammonia nitrogen levels between 25-50 ppm.

b. At the intersection of Elk Creek and 173rd Street dead minnows were observed. DNR Field Office 4 personnel took photographs and a large amount of manure foam was observed downstream from the bridge. The field test indicated ammonia nitrogen levels between 50-75 ppm.

c. Below the intersection of Elk Creek and 173rd Street dead fish were observed, including fish approximately 4 inches in length. Photographs were taken of this area.

d. Further downstream of the intersection of Willow Creek and 194th Street, one dead minnow was observed and the field test indicated ammonia nitrogen levels between 5-7 ppm.

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e. An area above the intersection of Willow Creek and 180th Street was observed. DNR Field Office 4 personnel did not observe any dead fish and the field test indicated ammonia nitrogen levels between 5-7 ppm.

f. Laboratory samples were collected upstream from the point of manure entry into Elk Creek at 140th Street (site A); at road intersections of Elk Creek at 153rd Street, County Road F20L, and 175th Street (sites B, C, D); upstream of the discharge (site E); at the point of discharge of Elk Creek into Willow Creek (site F); and downstream of the discharge at 180th Street (site G). The laboratory results were received on April 2, 2007 and indicated the following:

Location	Total Biological Oxygen Demand (BOD)	Ammonia Nitrogen (NH ₃)	Total Suspended Solids (TSS)	E. Coli
Site A	3 mg/L	0.18 mg/L	8 mg/L	10/100mL
Site B	Less than 2 mg/L	0.22 mg/L	5 mg/L	20/100mL
Site C	Less than 60 mg/L	31 mg/L	60 mg/L	Not Recorded
Site D	Less than 60 mg/L	47 mg/L	62 mg/L	240/100mL
Site E	Less than 4 mg/L	0.40 mg/L	150 mg/L	60/100mL
Site F	69 mg/L	52 mg/L	60 mg/L	570/100mL
Site G	7 mg/L	3.3 mg/L	160 mg/L	Not Recorded

4. On April 2, 2007, DNR Field Office 4 received the Report of Release from Mr. Schafer outlining NPP's account of the events during the day of the release.

5. The DNR Fisheries staff concluded that 378 fish valued at \$42.23 were killed as a result of the manure discharge. The costs of performing this assessment was \$558.69. The total fish kill assessment totals \$600.92.

6. On April 23, 2007, Notice of Violation was issued by DNR to NPP for the violations associated with the March 20, 2007 manure spill and fish kill investigation. The letter cited manure release requirements, manure control and prohibited discharge violations, and water quality requirements. The letter also informed NPP that the violations had been referred to DNR's legal department for further action. A copy of the inspection report was included with the letter. NPP has not previously been issued an Administrative Order by the DNR.

7. Since the date of the manure release, NPP has taken the following actions: (a) installed floats in each building pit and in certain manholes to automatically shut down the recycle pumps and flush tank timers if water backs up, (b) installed a telephone alarm system to notify NPP personnel that there is a problem with the system, (c) installed pressure switches on certain pumps, which will shut the pumps down if there is a loss of pressure in the line (a loss of pressure would indicate a breach of the line and (d) constructed a secondary containment area between the facility and Elk Creek, designed to contain any accidental release while also allowing controlled releases of storm water runoff.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state as defined by Iowa Code section 455B.171, except for adequately treated pollutants discharged pursuant to a permit from DNR. A permit has not been issued for this facility and DNR found evidence of the discharge of untreated pollutants into waters of the state as defined by Iowa Code section 455B.171. The DNR concludes the above-facts indicate a violation of this provision, however, the DNR acknowledges that NPP specifically disputes that any discharge permit is required or that the above-facts constitute a violation of this provision.

2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. DNR observed a large amount of manure foam down stream from the facility in Elk Creek. The discharge also resulted in a fish kill and raised levels of ammonia nitrogen. The above facts indicate a violation of one or more of these criteria.

3. 567 IAC 65.2(9) states that a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release. A manure release took place and was observed by the facility's staff at approximately 9:00 a.m. on March 20, 2007, it was not reported to DNR until 5:20 p.m. that evening (8hrs, 20 min.). The above facts indicate a violation of this provision.

4. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. DNR staff conducted an investigation on March 21, 2007, and determined that the manure release from NPP's Woodbine facility reached a water of the state and caused a fish kill. The above facts indicate a violation of this provision.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state as defined by Iowa Code section 455B.171 in violation of state law shall also be liable to pay restitution to DNR for injury caused to a wild animal by the pollution. The Natural Resources Commission has adopted 571 IAC chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state as defined by Iowa Code section 455B.171 in violation of state law shall also be liable to pay restitution to DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the discharge at NPP's Woodbine facility.

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V. ORDER

THEREFORE, it is hereby ordered, and NPP agrees, to do the following:

1. Comply with the manure release reporting requirements specified in 567 IAC 65.2(9);
2. Retain all manure in its confinement structures between periods of proper land application in accordance with 567 IAC 65.2(3). Discharge of manure into a water of the state, either directly or indirectly is prohibited.
3. Pay an administrative penalty of \$5,000.00 and restitution in the amount of \$600.92, for a total of \$5,600.92, within 60 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

Iowa Code sections 455B.109 and 459.603 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – NPP saved time, effort and money by failing to make a timely response and failing to take mitigation action such as damming off an area of the creek and land applying the manure. However, money initially saved was later spent in cleanup and modification of its storage lagoon system to help ensure a similar release does not happen in the future as detailed in Section III, paragraph 7. Based on these considerations no penalty is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by visual observation of impact to Elk Creek, including dead fish. For these reasons, \$2,500.00 is assessed for this factor.

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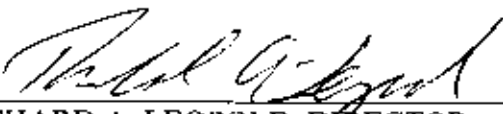
Culpability – NPP has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Although this release was accidental, the release was not reported in a timely manner. Based on the above considerations, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of NPP. For that reason, NPP waives its right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 11 day of
September, 2007.



For NEBRASKA PORK PARTNERS

Dated this 27 day of
August, 2007.

#61279; Kelli Book; Field Office 4; Gene Tinker; Ken Hessenius; EPA; VIII.D.1.a,
VIII.D.2.d